उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. HON'BLE MR. JUSTICE DHIRENDRA MISHRA

M.C.C. NO. 210 OF 2006

APPLICANT	:	M/s Shyamlal Agrawal, Through : Shyam Lal Agrawal, S/o Shri R.K. Agrawal, Aged about 55 years, Prop Presently residing at : Nehru Nagar, Ameri Road, Bilaspur (CG)
	VERSUS	
NON-APPLICANTS	1.	Chairman-cum-Managing Director,South Eastern Coalfields Limited, Seepat Road, PO : SECL, Bilaspur (CG)
	2.	The General Manager (Civil) South Eastern Coalfields Ltd., Seepat Road, PO : SECL, Bilaspur (CG)
	3.	The Chief General Manager, South Eastern Coalfields Limited, Sohagpur Area, PO: Dhanpuri Colly, Distt. : Shahdol (MP)

7.12.2007

Mr. Anand Kumar Tiwari, counsel for the applicant.

Dr. N.K. Shukla, Sr. Advocate with Ms. Ritu Mishra, counsel for the non-applicants.

Heard on I.A.No.2, application for taking documents on record.

Not opposed.

The application is allowed. Documents are taken on record.

शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

With the consent of the parties, the matter is heard finally.

The applicant by this petition under Section 11(6) of the Arbitration and Conciliation Act (for brevity 'the Act') has prayed for appointment of sole arbitrator with the averment that an arbitration agreement dated 20th February 1991 was entered into between the parties for execution of the work of Strengthening and Black Topping of approach road from check post to quarry at Dhanpuri Open Cast Mine (DOCM) and accordingly, the work order was issued on 20th February 1991. Value of the work was Rs.40,86,402/-. There was delay in execution of the work as it could not be completed within the stipulated period of four months as per the contract agreement and the delay was attributable to the non-applicants. A claim was made by the applicant for preparation of final bills and payment towards extra work, difference in the rate of work, escalation charges and for refund of the security deposit etc. However, his request for payment against the above claims remained unreplied and in these circumstances the applicant vide his notice dated 12th August 2003 raised a claim of Rs.11,00,000/- under various heads and called upon the non-applicants to appoint sole arbitrator for adjudicating the dispute arising out of the arbitration agreement as per Clause – 9 of the agreement, which reads as under:

> "9. **Arbitration** : All disputes or difference whatsoever arising between the parties out of or relating to the

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मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

construction meaning and operation or effected of this contract or breach there of shall be settled by a sole arbitrator appointed by CMD of South Eastern Coalfields Ltd. and the award or arbitrator shall be final and binding on the parties concerned. The arbitrator may from time to time with the consent of the parties anlarge the time for making and publishing the award. The arbitration proceedings shall be in accordance with the Arbitration Act, 1940."

Since the non-applicants have failed to appoint sole arbitrator within the stipulated period of 30 days, the instant application for appointment of sole arbitrator has been filed.

The non-applicants in their reply have mainly contested this petition on three grounds that the instant application is barred by law of limitation, that the applicant has waived his claim, if any, by his conduct and thirdly, that the application at the instance of unregistered partnership firm is not maintainable in view of Section 69 of the Partnership Act. However, subsequently the applicant has filed the certificate of registration of the firm.

At this juncture, learned counsel for the non-applicant does not press the ground of waiver of claim. However, he submits that so far as the ground of limitation is concerned, the same may be considered by the learned arbitrator during arbitration proceedings.

After going through the application, the documents annexed with the application and the reply of the non-applicants filed before

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मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the District Judge as also before this Court, this Court is satisfied that a case for appointment of sole arbitrator is made out and this Court has the territorial jurisdiction to entertain this application.

So far as objection of the non-applicants that the instant application is barred by law of limitation is concerned, it shall be open to the non-applicants to raise this ground before the Court of learned arbitrator, who may decide the same after considering the pleadings, documents and the evidence adduced by the respective parties in this regard.

In view of above, the application is allowed and a case for appointment of sole arbitrator is held to be made out.

However, at the time of hearing it was submitted by the parties to the proceedings that they have no objection if Hon'ble Mr. Justice K.L. Shrivastava (Retired), High Court of M.P. is appointed as the sole arbitrator to adjudicate the disputes.

I hereby, therefore, appoint Hon'ble Mr. Justice K.L. Shrivastava (Retired), High Court of M.P. as sole arbitrator, subject to his consent. The Hon'ble arbitrator may settle his terms and conditions and remunerations.

Registry to intimate Hon'ble Mr. Justice K.L. Shrivastava (Retired) about his appointment as sole arbitrator and to send all the papers along with addresses of the parties.

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मामला क्रमांक MCC 210/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Parties are also directed to approach Hon'ble Mr. Justice K.L. Shrivastava (Retired), High Court of M.P. C/o Mr. Arvind Kumar Shrivastava, District & Sessions Judge, Bilaspur (CG) and submit papers and take part in the arbitration proceedings. **Sd/-** **Dhirendra Mishra** **Judge**	